

**MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN
THE INCORPORATED COUNTY OF LOS ALAMOS AND
THE BOARD OF EDUCATION OF THE LOS ALAMOS PUBLIC SCHOOLS
WITH RESPECT TO MATERIAL MANAGEMENT AND WAREHOUSE OPERATIONS**

WHEREAS, beginning not later than July 1, 2010, the Los Alamos County Material Management Division (Division) shall provide both Los Alamos County (LAC) and the Board of Education of the Los Alamos Public Schools (LAPS) (jointly, the parties) services including inventory issue, project material planning, shipping services, ready stores in work areas, periodic relocation of classroom furniture, processing curriculum material, receipt processing of material ordered on purchase orders, identifying and processing fixed assets/controlled items, and mail distribution, as well as delivery functions associated with these actions.

WHEREAS, Division shall also provide staging and storage for project designated materials but shall not provide a labor pool for activities or functions not included above for either entity nor shall it provide general storage of non-inventory material unrelated to designated projects.

WHEREAS, this agreement is written with the understanding that as requirements and policies of the parties change throughout the term of this MOU, so too will the application of this MOU. Further, wherever compliance with identified policies, systems, ordinances, or laws is required hereby, the parties shall undertake a review thereof at least annually to assess applicability and ensure Division complies with those most current. Any changes or modification of the terms hereof shall be approved in writing as specified in Section IX below.

NOW, THEREFORE, the parties agree as follows:

I. LAC shall:

- A. Hire and incorporate two (2) LAPS warehouse staff into the Division organization at a substantially equivalent level to that from which they left employment with LAPS including, but not limited to position, current rate of pay, benefits, including medical benefits and seniority for lay-off purposes.
- B. Allow transferred employees to carry-over their balance of sick leave and vacation leave from LAPS.
- C. Allow transferred employees to use a total of up to 520 hours of accumulated sick leave carried over and accrued at LAC when used in conjunction with retirement.
- D. Allow transferred employees to accrue sick leave at the established rate for all full-time LAC employees which is 3.69 hours per pay period over twenty-six (26) pay periods per year.
- E. Allow transferred employees to accrue annual leave at 7.38 hours per pay period over twenty-six (26) pay periods per year.
- F. Not require transferred employees to serve a probationary period.
- G. Allow transferred employees to count their years worked and vested in Educational Retirement Act (ERA) as years worked in LAC for lay-off purposes in accordance with LAC Personnel Rules.
- H. Include specific rates of pay in the offer of hire tendered to transferred employees.
 - I. Except as modified herein, permit and require transferred employees to comply with all LAC rules, regulations, policies, practices and procedures.
- J. Purchase active LAPS inventory and incorporate it into LAC inventory. LAPS and LAC shall jointly determine the composition and value of this inventory before purchase by LAC, and shall complete the purchase and transfer of such inventory in accordance with applicable procurement requirements of LAC.
- K. Provide all current LAPS and LAC Material Management functions related to inventory, material planning, receipt processing, project material processing, internal mail distribution, processing of curriculum materials, shipping, and periodic relocation of classroom furniture.
- L. Provide identification and processing of fixed assets and other controlled items in accordance with the most current LAPS policies, practices and procedures.
- M. Ensure that a full range of repair and consumable items of reasonable quantity to support both parties is carried in inventory. Division shall undertake an active and ongoing solicitation from users of these items.

- N. Establish, replenish, and maintain a Ready Stores of sufficient size and reasonable quantities appropriate for the work center in which it is located.
- O. Assist LAPS with the physical disposal or transfer of all LAPS property declared obsolete, excess, or scrap in accordance with established LAPS policies and state law (see NMSA 1978 Section 13-6-1).
- P. Accept transfer, or title as appropriate, of LAPS warehouse-related forklift truck and equipment and provide for its continued maintenance and replacement when required. All LAPS users of this equipment shall be permitted to continue its use, subject to availability and qualifications of the operator.
- Q. Provide an online searchable catalog and remote inventory ordering system for all users.
- R. Provide access points for computer terminals with respect to LAPS specific network applications.
- S. Provide a method to charge issues, e.g., sales of LAC inventory items, or mail/shipping services provided to LAPS, in accordance with the LAPS chart of accounts.
- T. Provide training to all users, upon initial assignment, on the theory, operation, and services of the Division, as well as any software system necessary or required to perform user duties.
- U. Conduct a criminal background investigation of all Division personnel who routinely enter onto school grounds where children are present. The criminal background investigation shall consist of inquiry of the New Mexico Department of Public Safety and the Federal Bureau of Investigation, and shall meet the same criteria and requirements of a criminal background investigation conducted by LAPS pursuant to written LAPS policy for any of its employees working in the same or similar position. Any Division personnel failing to meet the requirements of the criminal background investigation shall be denied access to LAPS property.
- V. Issue items from inventory at actual cost to all users of both entities. These actual costs are determined by the cost averaging method to include all credits or rebates associated with the items. Provide to LAPS, upon request or schedule, financial reports to include actual charges for inventory, shipping, or other specific items or, upon LAPS request, provide a means for persons authorized by LAPS Business Manager to produce financial reports for those categories.
- X. Promulgate all necessary rules and regulations relating to Division operation to effect the actions, requirements and obligations of this MOU.

II. LAPS shall:

- A. Transfer at cost to LAC all active LAPS inventory, described in the current inventory list to be appended as Exhibit A upon actual start of combined operations, which shall include the category, description, quantity and current value of all items to be transferred.
- B. Transfer ownership or title, as appropriate, of LAPS warehouse forklift and other equipment to LAC for mutual use at the consolidated Airport Basin Site facilities. An inventory, current value, and identification information as to the property is to be appended upon actual start of combined operations and incorporated by reference for all purposes as Exhibit B. Transfer of this property and equipment to LAC shall be subject to the approval requirements of NMSA 1978 Sections 13-6-1 to 13-6-2.1.
- C. Provide appropriate access to Division personnel to areas and software systems necessary to accomplish the duties and obligations required by this MOU. Access to the LAPS software shall be limited to Division staff only and these staff shall be trained and certified by LAPS on the then current version of LAPS financial/purchasing software, before using the software.
- D. Maintain all Ready Stores areas as Division spaces and account for all self-issues from this area.
- E. Purchase from LAC, at actual, average cost, items held in or added to LAC inventory solely for LAPS use which become obsolete, excess, or unsalable.
- F. Pay LAC for all issues from Division, at cost, upon being presented by LAC, of an itemized invoice at a mutually agreed upon interval of monthly or less frequently.
- G. Pay for all shipping and mailing charges (e.g., UPS, FedEx, USPS, etc.), at cost provided by Division upon presentation by LAC of an itemized invoice at a mutually agreed upon interval of monthly or less frequently.
- H. Pay to LAC a mutually agreed upon amount for overhead associated with LAPS support by Division at a mutually agreed upon interval of monthly or less frequently. The overhead amount is determined to be equal to the compensation of two, current Material Management Specialists at LAC's rate. As of the date of this agreement, the overhead amount is \$122,747 prorated the first year according to the actual start date of combined operations. Once established, this overhead amount is not subsequently related to the wages and benefits and shall become the fixed annual

base amount for reimbursements of overhead as adjusted annually for CPI. No other overhead charges relating to warehouse building, fixtures, and utilities, building maintenance or vehicle maintenance shall be assessed by LAC unless mutually agreed upon in writing.

- I. Pay to LAC a one-time amount equal to the value of any leave balances assumed from LAPS by LAC.
- J. Comply with applicable procurement laws and regulation in its procurement of tangible property specified in this section.

III. Each recital is incorporated herein by reference for all purposes.

IV. This MOU shall be effective on the date it is executed by all parties. It shall continue in force and effect unless and until terminated by the mutual written agreement of the parties. In the event the parties cannot mutually agree to terminate this MOU, either party may give notice of termination on or prior to March 31st of a current fiscal year to be effective at the start of the immediate next fiscal year and shall terminate without further action by either party at such time.

V. Any notices served, given or made in connection with this MOU shall be made in writing, postage prepaid to the following addresses, and shall be deemed given upon hand delivery, verified delivery by telecopy (followed by copy sent by United States Mail), or five (5) calendar days after deposit in the United States Mail:

LAC:

Jim Roth
Procurement & Risk Administrator – LAC
901 Trinity
Los Alamos, New Mexico 87544
Telephone: (505) 661-7087

LAPS:

John Wolfe
Business Manager – LAPS
751 Trinity
Los Alamos, New Mexico 87544
Telephone: (505) 663-2239

With a copy to:
Eugene Schmidt, Superintendent
Los Alamos Public Schools
751 Trinity
Los Alamos, New Mexico 87544
Telephone: 505-663-6300

VI. This MOU is made under and shall be governed by the laws of the State of New Mexico, without regard to any conflicts of law principles that would require the application of the law of any other jurisdiction.

VII. In the event that any of the terms and conditions of this MOU, or the application of any such term or condition to any person or circumstance, shall be held invalid by any court having jurisdiction in the premises, the remainder of the MOU, and the application of such terms or conditions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

VIII. This MOU shall be subject to filing with, and to such changes or modifications as may from time to time be directed, by competent regulatory authority, if any, in the exercise of its discretion.

IX. This MOU constitutes the entire agreement and understanding of the Parties with respect to the subject matter herein. The parties agree that no modification of this MOU shall be binding unless such modification is in writing and is duly executed by authorized representatives of the Parties.

X. Each Party represents and warrants to the other Party that it has the requisite power and authority to execute this MOU and to perform the obligations set out in the MOU. The execution and delivery of this MOU and the performance of the obligations set out herein have been duly authorized by all necessary action on the part of each Party. The obligations set out herein will, upon execution hereof by each Party, be valid and binding obligations of such Party, enforceable against such Party in accordance with the terms and conditions herein except to the extent that enforceability hereof or thereof may be limited by applicable bankruptcy, insolvency,

reorganization, moratorium or other similar laws generally affecting creditors' rights and by equitable principles, regardless of whether enforcement is sought in equity or at law.

- XI. Each Party represents and warrants to the other Party that the execution and delivery of the MOU by such Party does not violate any applicable law or regulation by which the Party is bound, by any applicable court or administrative order or decree, or any agreement or contract to which it is a party.
- XII. This MOU shall be binding upon and inure to the benefit of the Parties and their respective authorized successors and assigns. Nothing in this MOU shall create or be deemed to create any third party beneficiary rights in any person not a party to this MOU. No Party may assign its rights, or delegate its obligations under this MOU without the prior written consent of the other Party, which consent shall not be unreasonably delayed or denied.
- XIII. Any dispute arising under this MOU shall be resolved in a court of competent jurisdiction.
- XIV. Any term or condition of this MOU may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set out in a written instrument duly executed and delivered by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this MOU in any one or more instances shall be deemed to be or construed to be a waiver of the same or any other terms or condition herein on any future occasion. No delay short of the statutory period of limitations in asserting or enforcing any right hereunder shall be deemed a waiver of such right.
- XV. This MOU was negotiated by the Parties, each of which was represented by legal counsel, and this MOU shall not be construed against any Party on the ground that such Party was the author of the MOU or of any provision thereof.
- XVI. This MOU may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument as if all the Parties to the aggregated counterparts had signed the same instrument. Without limiting the manner in which the MOU may be executed and delivered, a Party shall be considered to have fully executed and delivered this MOU by executing a counterpart of this MOU and sending the execution page by facsimile or other electronic means to the other Party.
- XVII. All of the privileges and immunities from liability, exemptions from laws, ordinances and rules, all pension, relief, disability, workers' compensation and other benefits which apply to the activity of officers, agents or employees of any Party when performing their respective functions within the territorial limits of their respective public agencies, shall apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under this MOU.
- XVIII. No Party shall be responsible for liability incurred as a result of any other party's act or omissions in connection with this MOU. Any liability incurred as a result of any party's participation in this MOU is subject to the immunities and limitations provided and imposed by the law of the State of New Mexico.

IN WITNESS WHEREOF, the parties have executed this MOU on the date(s) set forth opposite the signatures of their authorized representatives.

ATTEST:

INCORPORATED COUNTY OF LOS ALAMOS

Janet Foster

JANET FOSTER
COUNTY CLERK

BY: *Michael G. Wheeler* 11/12/09
MICHAEL G. WHEELER DATE
COUNCIL CHAIR

Approved as to form:

Mary M. McInerney

MARY M. MCINERNEY
COUNTY ATTORNEY



BOARD OF EDUCATION OF THE
LOS ALAMOS PUBLIC SCHOOLS

BY: *Joan Ahlers* 11/16/09
JOAN AHLERS DATE
Board President

Approved as to form:

John F. Kennedy 11/23/09
JOHN F. KENNEDY
SCHOOLS ATTORNEY